

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TERESA ESTERS</b>	)	
Claimant	)	
	)	
VS.	)	Docket No. <b>1,051,493</b>
	)	
<b>DOLLAR GENERAL STORE</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant requests review of the November 18, 2011 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

**ISSUES**

It was undisputed claimant suffered a work-related injury to her left shoulder while lifting a box at work. Treatment was provided and focused on claimant's left shoulder which ultimately required three surgeries. Claimant then sought treatment for her left elbow and wrist. Respondent denied claimant's request. The Administrative Law Judge (ALJ) referred claimant for an independent medical examination with Dr. Pat Do to address claimant's need for medical treatment for her various complaints as well as causation for the complaints. Upon receipt of the doctor's report the matter proceeded to preliminary hearing.

At preliminary hearing claimant agreed that she had not injured her left elbow and left wrist in the January 1, 2009 accident but claimant argued that her symptoms occurred after her first left shoulder surgery. Consequently, claimant further argued that an injury that occurs during treatment for a work-related injury becomes part of the compensable work-related injury.

The ALJ adopted Dr. Do's opinion that claimant's left elbow and left wrist were not causally related to her accidental injury and denied claimant's request for medical treatment for her left elbow and left wrist.

Claimant requests review of whether the ALJ erred in denying medical treatment for claimant's left elbow and left wrist.

The issue raised on this appeal from a preliminary hearing is whether claimant has met her burden of proof to establish that her left elbow and left wrist complaints are causally related to her January 1, 2009 work-related accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Whether claimant's left elbow and left wrist condition and need for medical treatment was directly attributable to the January 1, 2009, accident is an issue the Board may review on an appeal from a preliminary hearing decision because it gives rise to the jurisdictional issue of whether her injury and need for treatment are due to an accident that arose out of and in the course of her employment with respondent.<sup>1</sup>

Claimant testified that she experienced an onset of pain in her left shoulder while lifting at work on January 1, 2009. Respondent admitted that claimant suffered an accidental injury to her left shoulder and medical treatment was provided.

During the course of claimant's treatment, but before her third left shoulder surgery, claimant was examined by Dr. Pedro Murati on August 9, 2010, for treatment recommendations. Dr. Murati diagnosed claimant as status post diagnostic left shoulder arthroscopy, open removal of part of the distal clavicle and adhesions in the subacromial space as well as rotator cuff repair. The doctor also diagnosed claimant with neck pain with signs and symptoms of radiculopathy, left axillary neuropathy, left carpal tunnel syndrome, and, myofascial pain syndrome affecting the left shoulder girdle extending to the cervical and thoracic paraspinals. Dr. Murati opined that claimant's diagnoses are a direct result of her work-related injury that occurred on January 1, 2009, while working for respondent. Additional treatment recommendations were provided by the doctor.

As previously noted, claimant underwent three surgical procedures to her left shoulder primarily to repair a rotator cuff tear. During the course of her treatment claimant later complained of ongoing left shoulder problems as well as complaints of neck, left elbow, left wrist and right shoulder problems.

On May 12, 2011, the ALJ ordered an independent medical examination by Dr. Pat Do "to perform a joint medical evaluation to address medical needs and all body parts complained of and causation of such complaints." Dr. Do performed a physical examination and diagnosed claimant with status post three arthroscopic surgeries to the left shoulder, myofascial neck pain with some underlying degenerative disk disease at C5-6 and C6-7, left elbow pain with medial and lateral epicondylitis, left carpal tunnel syndrome and right shoulder pain with impingement and possible rotator cuff pathology. At the time of this evaluation, claimant was not at maximum medical improvement. The doctor recommended physical therapy, anti-inflammatories, muscle relaxants and trigger point injections for claimant's left shoulder and neck. Dr. Do opined that claimant sustained neck

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<sup>1</sup> See K.S.A. 44-534a(a)(2) and K.S.A. 44-551(b)(2)(A).

pain and left shoulder pain due to her work-related injury. The doctor also opined that claimant's right shoulder is a natural and probable consequence of her January 2009 injuries to her left shoulder and left side of her neck. But Dr. Do opined that claimant's left elbow and left wrist complaints were not related to the work-related accident. Dr. Do noted in pertinent part:

I think carpal tunnel got dragged into this as well as the left elbow with radiating type symptoms, but neither one of those occurred around the time of her 2009 incident. I think her potential left carpal tunnel syndrome and her left elbow medial and lateral epicondylitis is [sic] not causally related to January 2009 incident.<sup>2</sup>

The ALJ issued the Order on November 18, 2011, denying claimant's request for medical treatment for her left elbow and wrist but Dr. Do was authorized to treat claimant's bilateral shoulder and neck complaints.

Claimant argues that Dr. Murati's opinion supports her contention that her current problems with her left elbow and wrist are a natural consequence of her shoulder surgery. This Board member disagrees. In this instance, Dr. Murati attributed claimant's left elbow and wrist conditions to her accident on January 1, 2009. But claimant has admitted that her left elbow and left wrist complaints were not caused by the accident. Claimant argues those conditions were caused by her first surgery and there is nothing in Dr. Murati's report that attributes claimant's left elbow and left wrist complaints to her surgeries.

Moreover, the court ordered independent medical examiner, Dr. Do, did not attribute her left wrist and left elbow complaints to her work-related injury. Based upon the record compiled to date this Board Member affirms the ALJ's determination that claimant failed to meet her burden of proof to establish that her left wrist and left elbow complaints are causally related to her January 1, 2009 work-related accidental injury.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that Administrative Law Judge Thomas Klein's Order dated November 18, 2011, is affirmed.

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<sup>2</sup> Dr. Do's IME (Aug. 3, 2011) at 3.

<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2010 Supp. 44-555c(k).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2012.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Matthew M. Hogan, Attorney for Respondent  
Thomas Klein, Administrative Law Judge